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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/628,283	07/28/2000	Shinichi Kakiuchi	P19372.A01	3442

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EXAMINER

SELBY, GEVELL V

ART UNIT PAPER NUMBER

2615

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/628,283

Applicant(s)

KAKIUCHI ET AL.

Examiner

Gevell Selby

Art Unit

2615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 U.S.C. 103(a) for claims 1 and 12-17.
6. ☒ Newly proposed or amended claim(s) 1 and 12-17 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1 and 12-17.

Claim(s) objected to: _____.

Claim(s) rejected: 18 and 20-27.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see appended response to arguments.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


TUAN HO
PRIMARY EXAMINER

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see the after-final amendment, filed 2/23/05, with respect to claims 1 and 12-17 have been fully considered and are persuasive. The 35 U.S.C. 103(a) rejections of claims 1 and 12-17 have been withdrawn.
2. Applicant's arguments filed 2/23/05, regard to claims 18 and 20-37 have been fully considered but they are not persuasive.
3. The applicant submits the combination of Christie and Ohtomo does not disclose the claimed features of claim 18 because the Christie reference does not reference a supplemental light emitting period or radiating the distance measuring light beams from a light source a predetermined number of times. The Examiner respectfully disagrees.

Examiner's Response:

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art to combine Christie in view of Ohtomo in order to quickly and easily transmit distance data and other imaging information wirelessly to a remote device to store or use in processing.

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In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In regard to claim 18, the combination of Christie and Ohtomo provides for transmitting the data transmitting light beam and the distance measuring light beam in one operation superposed with each other as taught by the Ohtomo reference. The Ohtomo reference further discloses continues to transmit the distance measurement light after the data transmitting period in column 16, in figure 20, step 88. It is also implied in the Christie reference that when the data transmission is shorter the distance measuring transmission, the distance measuring transmission will continue to transmit for the several thousand pulses collected by the CCD in one frame, thereby providing for a supplemental light emitting period. It is also implied by the Christie reference that the laser will continue to radiate at predetermined number of times, several thousand pulses, until the same amount of light is radiated each time a distance measurement is taken in order to have the same pulse train for each frame. Therefore, the combination of Christie and Ohtomo discloses all the claimed limitations of claim 18 and the 35 U.S.C. 103(a) rejection of claims 18 and 20-27 would be maintained.

Allowable Subject Matter

4. Claims 1 and 12-17 are allowed.
5. The following is a statement of reasons for the indication of allowable subject matter:

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In regard to claims 1 and 12-17, the prior art does not disclose the combination of limitations claimed in claim 1, specifically the limitation of:

wherein a series of said distance measuring light beams and a series of said data transmitting light beams are superposed so that said data transmitting light beams are radiated in the intervals between said distance measuring light beams and timing for radiating said data transiting light beams is based upon the timing of said radiation of said distance measuring light beams.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gevell Selby whose telephone number is 571-272-7369. The examiner can normally be reached on 8:00 A.M. - 5:30 PM (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Groody can be reached on 571-272-7950. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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gvs



TUAN HO
PRIMARY EXAMINER